



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

December 27, 1990

Mr. Thomas R. Thompson
Staff Counsel
State Fire Marshal's Office
State Board of Insurance
1110 San Jacinto
Austin, Texas 78701-1998

OR90-592

Dear Mr. Thompson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 10478.

You have received a request for a copy of a fire investigation report. You have submitted to us copies of materials responsive to the request for which you claim exception from the act. Item 3 consists of the investigation report compiled by the State Fire Marshal's Office. You claim that the documents comprising the report are excepted by reason of the litigation exception, section 3(a)(3), and the law enforcement exception, section 3(a)(8).

A section 3(a)(3) claim requires a showing that litigation is pending or reasonably anticipated; you have not adequately addressed this requirement in your letter, and therefore have not made your case for this exception. However, we find that much of the material designated Item 3 is excepted from required disclosure under section 3(a)(8). This office ruled in Open Records Decision No. 134 (1976) that section 3(a)(8) applied to some portions of a State Fire Marshall's investigative report. That decision indicated that basic factual information contained in such a report, including an indication of the probable cause of the fire, must be disclosed; while portions dealing with the investigator's opinions and conclusions about the possible motive for the fire, and the names of witnesses or possible suspects were within the law enforcement exception. Open Records Decision No. 134, citing Houston Chronicle Publishing Company v. City of Houston, 531 S.W.2d 177 (Tex. Civ. App. - Houston [14th Dist.] 1975, writ ref'd n.r.e. per curiam); see also Open Records Decision No. 127 (1976).

Accordingly, we find that the portions of the documents comprising Item 3 that deal with possible motives for the fire, or indicate the identities of suspects, or reveal evidence gathered in the investigation may be withheld. We have marked these portions; the balance must be disclosed. On the other hand, Item 4, consisting of the Eustace Fire department's offense report on this case, must be disclosed in its entirety; the information contained in this document is precisely the kind of information that Open Records Decision No. 134 held open to the public.

Items 5 and 6 consist of subpoenas issued by the State Fire Marshall's office to telephone companies, demanding the production of the telephone records of certain individuals. These documents may be withheld under section 3(a)(8) as they contain information identifying suspects. Open Records Decision No. 127. In Open Records Decision No. 127 this office stated that information about suspects

is the type of information the disclosure of which might impede an ongoing investigation or endanger the position of the State in criminal prosecutions, and as such is excepted from required public disclosure by section 3(a)(8).

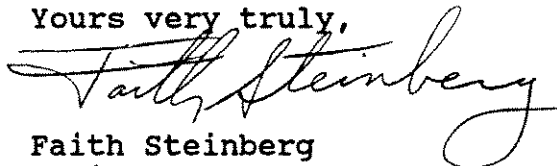
Item 7 consists of telephone records supplied to the State Fire Marshal's office pursuant to these subpoenas. These records are excepted from disclosure under section 3(a)(8) as evidence gathered by a law enforcement agency. See Open Records Decision No. 127 at 7.

Items 11 and 12 consist of information provided to the State Fire Marshal's office by an insurance company pursuant to article 5.46 of the Texas Insurance Code. Article 5.46(D) of the Insurance Code provides that such information is to remain confidential until its production is required in a civil or criminal proceeding. Therefore, we agree that these documents are exempt from disclosure under the section 3(a)(1) exception for information deemed confidential by statutory law. See Open Records Decision No. 216 (1978). Given our disposition of these items under section 3(a)(1), we need not consider the other objections you raise to their disclosure.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a

published open records decision. If you have questions about this ruling, please refer to OR90-592.

Yours very truly,

A handwritten signature in cursive script, reading "Faith Steinberg". The signature is written in dark ink and is positioned above the typed name and title.

Faith Steinberg
Assistant Attorney General
Opinion Committee

FS/le

Ref.: ID# 10478, 11120

Enclosure: Open Records Decision Nos. 127, 134, 216
Marked Documents

cc: Ms. Tina Dellinger
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